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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,686	02/24/2004	Gabe Neiser	200-91	8391
24336	7590	01/25/2005	EXAMINER	
KEUSEY, TUTUNJIAN & BITETTO, P.C. 14 VANDERVERENTER AVENUE, SUITE 128 PORT WASHINGTON, NY 11050				PRONE, JASON D
ART UNIT		PAPER NUMBER		
		3724		

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/785,686	NEISER, GABE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jason Prone	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "handle", of claims 4 and 9, the "cutter device disposed on the second arm", of claim 6, and "means for rotating said driver gear", of claim 8, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

Art Unit: 3724

2. The disclosure is objected to because of the following informalities: On page 7 line 8, the phrase "stand on t a display counter" should be replaced with "stand on a display counter".

Appropriate correction is required.

***Claim Objections***

3. Claim 8 and 9 are objected to because of the following informalities: On line 2 of claim 8, the phrase "said driving comprising said drive gear" should be replaced with "said driving means comprising said drive gear". The last line of claim 9 appears to be unfinished. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. On line 2 of claim 4, the phrase "a handle for rotating at least one of said first and said second gears" is unclear. First it s unclear what structure the handle incorporates and the specification only provides support for the advancing means for rotating one of the two gears. It is unclear what structure the opener entails to allow for the advancing means to rotate the other of the two disclosed gears.

7. Claim 5 recites the limitations "said idler gear" and "said driver gear" on line 2. There is insufficient antecedent basis for these limitations in the claim.

Art Unit: 3724

8. On line 9 of claim 6, the phrase "a cutting device disposed on one of said arms" is unclear. The specification only provides support for the cutter device being disposed on the first arm (Fig. 6). It is unclear what structure the opener entails to allow for the cutter device to be disposed on the other of the two disclosed arms.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Himmighofen et al. (5,197,197).

***In regards to claims 1-5:***

Himmighofen et al. discloses the same invention including a opener (Title) comprising a means for gripping an edge of the work piece (Fig. 14), a cutting device for engaging and puncturing in response to closing the gripping means (36), a means for advancing the work piece after the cutting device has punctured the work piece (16), that the means for gripping comprises a first gear (35) and a second gear (17) mounted such that the first and second gears are closeable so as to engage the work piece therebetween (Fig. 14), that the first gear comprises an idler gear (35), that the second gear comprises a drive gear (17), that the advancing means comprises a handle for

Art Unit: 3724

rotating the second gear (16), and that the cutting device punctures an area of the work piece when the idler and driver gear are closed onto and engages the work piece (36).

In regards to claims 6-9:

Himmighofen et al. discloses the same invention including a opener (Title) including a first arm having two opposing ends (47), a second arm having two opposing ends (18) pivotally attached to the first arm (13), a first gear rotatably mounted on the first arm (35), a second gear rotatably mounted on the second arm (17), that the pivotal closing movement of the first and second arms causes the first and second gears to move closer to each other and engage the work piece (Fig. 14), a cutting device disposed on the first arm adjacent the first gear (36), that the cutting device punctures the a work piece when the arms are pivotally closed, a driving means for advancing the work piece through closed first and second gears (16), that the first gear comprises an idler gear (35), that the second gear comprises a driver gear (17), that the driving means comprises the driver gear and a means for rotating the driver gear (17 and 16), and that the rotating means comprises a handle rotatably connected to the driver gear (16).

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Ostroski et al., Rhodes, and Kuo.
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 571-272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

Art Unit: 3724

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JP  
January 19, 2005

  
Allan N. Shoap

Supervisory Patent Examiner  
Group 3700